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Notice of Allowability	Application No.	Applicant(s)	
	10/828,883	PARIS, MICHAEL	
	Examiner	Art Unit	
	Jessica L. Reidel	3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--
 All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicant's Amendment on December 16, 2005.
2. ☒ The allowed claim(s) is/are 1-4,6 and 13-18.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION

1. Acknowledgement is made of Applicant's Amendment, which was received by the Office on December 16, 2005. Claims 5 and 7-12 have been cancelled. Claims 14-18 are new. Claims 1-4, 6 and 13-18 are active.

Allowable Subject Matter

2. Claims 1-4, 6 and 13-18 are allowed.

3. The following is an examiner's statement of reasons for allowance:

Ternes (U.S. 2005/0065443) discloses an implantable medical device 102 that monitors a changing heart rate of a patient and produces heart rate measurements (see Ternes Fig. 7, page 4, paragraph 34 and page 5, paragraphs 42-43), identifies an onset of an exercise episode when at least one of the following two conditions occur: at least one heart rate measurement exceeds a first heart rate measurement threshold R1 and/or at least one sensor output, read as an activity level, exceeds a first activity level threshold S1, identifies an end of an exercise episode when at least one of the following two conditions occur: at least one heart rate measurement falls below a second heart rate measurement threshold R2 and/or at least one sensor output, read as an activity level, falls below a second activity level threshold S2 (see Ternes page 3, paragraphs 27-28), and uses the exercise episode and end of the exercise episode to determine a maximum observed heart rate (see Ternes page 4, paragraph 34).

It is inherent that the onset of an exercise episode and the end of an exercise episode comprise identifying heart rate since heart rate versus time is plotted during the entire episode via display 226 (see Ternes Fig. 7 and page 5, paragraph 43). Ternes discloses that the implantable medical device 102 may complete *all of* the processing of the exercise episode data

on its own before communicating the date to an external device 200 for display purposes (see Ternes page 2, paragraph 26, page 3, paragraphs 27-28 and page 5, paragraph 42). Ternes further discloses that the implantable medical device 102 comprises a memory circuit 212 within its processor circuit 210 (see Ternes Fig. 2) and it is inherent that the implantable medical device 102 employs memory circuit 212 to *store the processed data* if the implantable medical device 102 completes processing of the exercise episode on its own before sending the processed data to the external device 200. Ternes discloses the claimed invention as discussed above except that the maximum observed heart rate is not determined when a third condition of “a difference between the heart rate measurement and the stored heart rate measurement not exceeding a predetermined threshold” occurs.

The references of the prior art fail to show or teach all of the Applicant's claimed invention and fail to show or teach any obviousness type improvement over the prior art and as a result, the Examiner deems these claims and their depending claims to be allowable over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Response to Arguments

4. Applicant's arguments, see page 9-10, paragraphs 4-5 of Applicant's Remarks in the Amendment, filed December 16, 2005, with respect to Claim 1(a-c)(i-ii) have been fully considered but they are not persuasive. As stated above, Ternes discloses that the implantable

medical device 102 may complete *all of* the processing of the exercise episode data on its own before communicating the data to an external device 200 for display purposes (see Ternes page 2, paragraph 26, page 3, paragraphs 27-28 and page 5, paragraph 42). Ternes further discloses that the implantable medical device 102 comprises a memory circuit 212 within its processor circuit 210 (see Ternes Fig. 2) and it is inherent that the implantable medical device 102 employs memory circuit 212 to *store the processed data* if the implantable medical device 102 completes processing of the exercise episode on its own before sending the processed data to the external device 200. The system 100 of Ternes therefore does not “require external processing to identify the maximum heart rate” as Applicant states on page 10, lines 10-11 of Applicant’s Remarks in the Amendment, filed December 16, 2005.

5. Applicant’s arguments, see page 10, paragraph 1 of Applicant’s Remarks in the Amendment, filed December 16, 2005, with respect to Claim 1(c)(iii), however, have been fully considered and are persuasive. Therefore, the 35 U.S.C. 103(a) rejection of Claim 1 made on October 13, 2005 has been withdrawn.

Conclusion

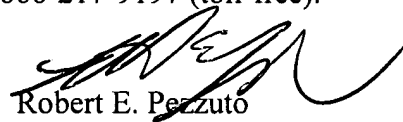
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica L. Reidel whose telephone number is (571) 272-2129. The examiner can normally be reached on Mon-Thurs 7-4:30 and every other Friday 7-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jessica L. Reidel
Examiner
Art Unit 3766
01/05/06


Robert E. Pezzuto
Supervisory Patent Examiner
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